**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**W.P. No.31957 of 1997**

**DATED: 31.10.2007**

Between:-

Deputy Executive Engineer, Stores & Mechanical Sub-Division, Vamsadhara Project, Hiramandalam, Srikakulam District.

... PETITIONER

AND

Kurmana Asiraya & another.

...

RESPONDENTS

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION No. 31957 of 1997**

**O R D E R**

Heard the learned Government Pleader for Irrigation & Command Area Development and Sri Badana Bhaskara Rao, learned counsel for the first respondent.

The following dispute was referred for adjudication by the Industrial Tribunal-cum-Labour Court, Visakhapatnam:

> "Whether the Deputy Executive Engineer, Vamsadhara Project Stores and Mechanical Sub-Division, Vamsadhara Project, Hiramandalam is justified in terminating the services of Sri K.Asirayya? If so, to what relief the workman is entitled to?

In his claim statement, the first respondent-workman contended that he worked as Man Mazdoor from 1973 to August 1976 continuously and that he was retrenched without any notice and compensation while his juniors were retained and fresh workmen were appointed. The first respondent-workman contended that his retrenchment was contrary to the provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947 (for short 'the Act'), that he remained unemployed since August, 1976 and he could not get employment elsewhere in spite of his best efforts.

In its counter filed before the Tribunal, the petitioner-Management denied that the first respondent-workman had worked as Man Mazdoor with them from 1973 to August, 1976 and pleaded that he worked only for 224 days as mentioned in the list attached to the counter. According to the petitioner, the first respondent-

workman was engaged on daily wage basis as a casual labour only when there was work load and, as he had not completed the statutory period of work in any calendar year, he was not entitled for retrenchment compensation.

The workman examined himself as WW.1 and marked the Conciliation failure report as Ex.W.1. On behalf of the Management, the Superintendent in the office of the Executive Engineer, Vamsadhara Project was examined as MW.1. However, no documents were marked on behalf of the Management.

The first respondent-workman denied the suggestion in his cross-examination that he worked between 1974 and 1975 intermittently. MW.1, in his chief-examination, stated that the records disclosed that the first respondent-workman had worked only for a period of 224 days during the years 1974 and 1975 as NMR on daily wage basis and as he did not work for the requisite period of 240 days he was not entitled to any notice or compensation. MW.1 admitted, in his cross-examination, that he did not verify the concerned registers and did not attend before the Assistant Commissioner of Labour for Conciliation. He also stated that he did not produce the relevant records as they were filed in I.D.No.98 of 1988.

The Tribunal noted that WW.1 had worked from 1973 to 1976 continuously on daily wage basis and, while his juniors Sri D.Adinarayana, Sri D.Krishna Murthy and Sri S.Ramulu were retained, his services were retrenched. The Tribunal held that there was nothing in the cross-examination of WW.1 to disbelieve his version that he worked with the Management from 1973 to 1976 as Man Mazdoor. The Tribunal further held that nothing prevented the Management from calling for the records in I.D.No.98 of 1988 and file in this case if they really pertain to the case on hand. The Tribunal also noted the admission of MW.1 that the records did not pertain to the workman. For failure of the

petitioner to produce the records for the relevant period, the Tribunal drew an adverse inference and held that the first respondent-workman had worked continuously from 1973 to 1976 and observed that if the records had been produced, they would reveal that the workman had worked continuously from 1973 to August, 1976. The Tribunal held that since he was neither given one month's notice nor paid retrenchment compensation as required under Section 25-F of the Act, the retrenchment of the respondent-workman was contrary to Section 25-F of the Act. The Tribunal held that the workman was entitled for reinstatement and was not entitled to backwages and continuity of service. The Tribunal, while holding that it was highly improbable that a person eking out his livelihood by doing labour on daily wages would sit idle, directed reinstatement of the first respondent-workman into service without backwages and without continuity of service.

Learned Government Pleader for Irrigation would submit that, since the burden lay heavily on the first respondent-workman to establish that he had completed 240 days service in the 12 month period preceding his termination, the Tribunal had grossly erred in drawing an adverse inference on the ground that the petitioner-Management had not produced the records. She would contend that the workman had worked for only 224 days during the years 1974-1975 intermittently and had not satisfied the requirements of having put in 240 days of service in the 12 month period preceding his retrenchment for obtaining the protection under Section 25-F of the Act.

It is well settled by a catena of judgments in **Manager, Reserve Bank of India, Bangalore v. S.Mani**[1]; **Batala Cooperative Sugar Mills Ltd v. Sowaran Singh**[2]; **Surendranagar District Panchayat v. Dahyabhai Amarsinh**[3]; **Chief Engineer (construction) v. Keshava Rao (dead) by**

**Lrs**[4]**; Range Forest Officer v. S.T.Hadimini**[5] that the burden, to prove that he had put in a minimum of 240 days service during the period of 12 months prior to the date of his termination, is on the workman and in the absence of the workman having discharged this burden, it cannot be said that the mandatory requirement under Section 25-F is violated. It is only when this initial burden is discharged by the workman, would the burden shift on the employer to adduce evidence to the contrary.

Except the self-serving statement of the first respondent-workman, there is no evidence on record to show that he worked continuously form 1973 to 1976. The very fact that he had raised a dispute before the Tribunal, which was numbered as I.D.No.52 of 1991, nearly a decade and a half after his termination would cast serious doubts on the genuineness of his claim. Except his self-serving oral testimony, there is no other evidence on record to show that the first respondent-workman had completed 240 days of service in the 12 month period preceding his termination. Contrary to the law laid down by the Supreme Court, the Tribunal erred in shifting the onus on the petitioner-Management. The award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No.52 of 1991 dated 25-09-1996 is, accordingly, quashed.

The Writ Petition is, accordingly, allowed. However, in the circumstances, without cost.

_____

31.10.2007

usd

[1] 2005(5) SCC 100
[2] 2005(8) SCC 481
[3] 2005(8) SCC 750
[4] 2005(11) SCC 229
[5] 2002(3) SCC 25